



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R09-RCRA-2021-0047; FRL-10021-21-Region 9]

#### Nevada: Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rule.

**SUMMARY:** Nevada has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes correspond to certain federal rules promulgated between July 1, 2008 and July 1, 2018. EPA has reviewed Nevada's application with regard to federal requirements and is proposing to authorize the state's changes.

**DATES:** Comments on this proposed rule must be received by **[insert date 30 days after date of publication in the *Federal Register*]**.

**ADDRESSES:** All documents in the docket are listed in the [www.regulations.gov](https://www.regulations.gov) index.

Publicly available docket materials are available either electronically in [www.regulations.gov](https://www.regulations.gov), or in hard copy. You can view and copy Nevada's application and associated publicly available materials at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 901 So. Stewart Street, Ste. 4001, Carson City, NV 89701 (phone number: 775-687-4670), during business hours from 9 a.m. to 5 p.m. Monday through Friday. Interested persons wanting to examine these documents should make an appointment at least 24 hours in advance.

**Instructions:** Submit your comments, identified by Docket ID No. **EPA-R09-RCRA-2021-0047**, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). The <http://www.regulations.gov> website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**FOR FURTHER INFORMATION CONTACT:** Sorchia Vaughan, [Vaughan.Sorchia@epa.gov](mailto:Vaughan.Sorchia@epa.gov), 415-947-4217

**SUPPLEMENTARY INFORMATION:**

*A. Why are revisions to state programs necessary?*

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to

EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New federal requirements and prohibitions imposed by federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Nevada, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

*B. What decisions has EPA made in this rule?*

EPA concludes that Nevada's application to revise its authorized program meets all statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Nevada final authorization to operate as part of its hazardous waste program the changes listed below in Section F of this document, as further described in the authorization application.

Nevada has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA, as discussed above.

*C. What is the effect of this proposed authorization decision?*

If Nevada is authorized for the changes described in its authorization application, the changes will become part of the authorized state hazardous waste program, and therefore will be federally enforceable. Nevada will continue to have primary enforcement authority and responsibility for its state hazardous waste program. EPA retains its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized state program requirements, and suspend or revoke permits; and

- Take enforcement actions regardless of whether the state has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Nevada is being authorized by this action are already effective and are not changed by this action.

*D. What happens if EPA receives comments that oppose this proposed action?*

EPA will consider all comments received during the comment period and address all such comments in a final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

*E. What has Nevada previously been authorized for?*

Nevada initially received final authorization on August 19, 1985, effective November 1, 1985 (50 FR 42181) to implement the RCRA hazardous waste management program. Nevada has since received authorization for all revisions except for 40 CFR 260.22 and the final rule published on April 12, 1989 (61 FR 16289) addressing Imports and Exports of Hazardous Waste. EPA granted authorization for changes to Nevada's program on the following dates: April 29, 1992, effective June 29, 1992 (57 FR 18083); May 27, 1994 and June 23, 1994 (corrections), effective July 26, 1994 (59 FR 27472 and 59 FR 32489); April 11, 1995, effective June 12, 1995 (60 FR 18358); June 24, 1996, effective August 23, 1996 (61 FR 32345); January 29, 1999, effective March 30, 1999 (64 FR 4596); June 12, 2002, effective August 12, 2002 (67 FR 40229); February 26, 2009, effective April 27, 2009 (74 FR 8757); and March 23, 2016, effective June 6, 2016 (81 FR 35641).

*F. What changes is EPA proposing with this action?*

Nevada submitted a final complete program revision application to EPA dated January 8, 2021, seeking authorization of changes to its hazardous waste program that correspond to certain federal rules promulgated between July 1, 2008 and July 1, 2018 (Checklists 219, 222, 223, 225, 227-229, 231-233C, 234, and 236-239). EPA proposes to determine, subject to receipt of written comments that oppose this action, that Nevada's hazardous waste program revisions are

equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all the requirements necessary to qualify for authorization. Nevada adopts by reference the federal RCRA regulations in effect as of July 1, 2018, at Nevada Administrative Code (NAC) 444.8632, as adopted in LCB File R084-19, effective August 25, 2020. The federal requirements for which the State is being authorized are as follows:

<b>Description of Federal Requirement and Checklist number</b>	<b>Federal Register Volume, Page and Date</b>	<b>Analogous State Authority</b>
Revisions to DSW Rule (219)	73 FR 64668-64788 (10/30/2008)	NAC 444.8632
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (222)	75 FR 1236-1262 (1/8/2010)	NAC 444.8632
Technical Corrections/Clarifications (223)	75 FR 12989-13009 (3/18/2010), 75 FR 31716-31717 (6/4/2010)	NAC 444.8632
Removal of Saccharin and its Salts from the list of HW (225)	75 FR 78918-78926 (12/17/2010)	NAC 444.8632
Revisions to Treatment Standards of Carbamate Wastes (227)	76 FR 34147-34157 (6/13/2011)	NAC 444.8632
Technical Correction/Clarification (228)	77 FR 22229-22232 (4/13/2012)	NAC 444.8632
Conditional Exclusions for Solvent Contaminated Wipes (229)	78 FR 46448-46485 (7/31/2013)	NAC 444.8632
Hazardous Waste Electronic Manifest System (231)	79 FR 7518-7563 (2/7/2014)	NAC 444.8632, NAC 444.8655, NAC 444.8666
Revisions to Export Provisions of the Cathode Ray Tube (CRT) Rule (232)	79 FR 36220-36231 (6/26/2014)	NAC 444.8632, NAC 444.8633
Revision to DSW Rule -Non-waste determinations and variances (233 A)	80 FR 1694-1814 (1/13/2015)	NAC 444.8632
Revision to DSW Rule -Legitimacy related provisions (233 B)	80 FR 1694-1814 (1/13/2015)	NAC 444.8632
Revision to DSW Rule -Speculative Accumulation (233 C)	80 FR 1694-1814 (1/13/2015)	NAC 444.8632
Vacatur of Comparable Fuels and Gasification (234)	80 FR 18777-18780 (4/8/2015)	NAC 444.8632
Imports and Exports of Hazardous Waste (236)	81 FR 85696-85729 (11/28/2016),	NAC 444.8632, NAC 444.8633

	82 FR 41015-41016 (8/29/2017)	
Generator Improvements Rule (237)	81 FR 85732-85829 (11/28/2016)	NAC 444.8632, NAC 444.6665, NAC 444.735, NAC 444.850, NAC 444.8677, NAC 444.8681
Confidentiality Determinations for Hazardous Waste Export and Import Documents (238)	82 FR 60894-60901 (12/26/2017)	NAC 444.8632
Electronic Manifest System User Fee (239)	83 FR 420-462 (1/3/2018)	NAC 444.8632

*G. How are the revised state rules different from the federal rules?*

*More Stringent:* Nevada did not adopt several optional provisions that are less stringent than existing Nevada rules, resulting in Nevada having a more stringent hazardous waste program.

The provisions that Nevada did not adopt are:

- 40 CFR 261.4(a)(23): Generator Controlled Exclusion (Definition of Solid Waste Rule)
- 40 CFR 261.4(a)(24-25): Transfer-Based Exclusion (Definition of Solid Waste Rule)
- 40 CFR 261.4(a)(27): Remanufacturing Exclusion (Definition of Solid Waste Rule)
- Part 262 Subpart K: Academic Laboratory Generator Standards
- 40 CFR 261.4(h): Conditional Exclusion for Carbon Dioxide Streams in Geologic Sequestration
- 40 CFR 261.4(b)(4): Disposal of Coal Combustion Residuals from Electric Utilities

*Nondelegable Rules:* EPA cannot delegate the federal requirements in 40 CFR 261.41 contained in the Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule set forth in 79 FR 36220, the federal requirements contained in the Imports and Exports of Hazardous Waste rule set forth in 81 FR 85696, and the federal requirements in 40 CFR 260.2(d) contained in the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule set forth in 82 FR 60894. While Nevada adopted these requirements by reference in NAC 444.8632, EPA will continue to implement these requirements.

*Variances and Determinations:* Nevada adopted 40 CFR 260.30, but EPA retains any authority to grant any variance from the regulations. Nevada adopted 40 CFR 260.34 but non-waste determinations must be made by the EPA.

Other than the differences discussed above, Nevada incorporates by reference the remaining federal rules listed in Section F, so there are no significant differences between the remaining federal rules and the revised state rules being authorized today.

*H. Who handles permits after the authorization takes effect?*

Nevada will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g)(1), gives EPA the authority to issue or deny permits or parts of permits for requirements for which the State is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Nevada for the new or revised HSWA standards until Nevada has received final authorization for such new or revised HSWA standards. EPA and Nevada have agreed to a joint permitting process for facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

*I. How does this action affect Indian country (18 U.S.C. 1151) in Nevada?*

Nevada is not authorized to carry out its hazardous waste program in Indian country within the State. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

*J. What is codification and is EPA codifying Nevada's hazardous waste program as authorized in this rule?*

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this

by referencing the authorized state rules in 40 CFR part 272. EPA is not codifying the authorization of Nevada's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart DD for this authorization of Nevada's program changes.

#### *K. Statutory and Executive Order Reviews*

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations



That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. See 15 U.S.C. 272 note, sec. 12(d)(3), Pub. L. No. 104-113, 110 Stat. 783 (Mar. 7, 1996) (exempting compliance with the NTTAA’s requirement to use VCS if compliance is “inconsistent with applicable law”). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse

human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 23, 2021.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

[FR Doc. 2021-06592 Filed: 4/2/2021 8:45 am; Publication Date: 4/5/2021]